

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

**SPRINT SPECTRUM L.P. and
T-MOBILE NORTHEAST
COMMUNICATIONS LLC (f/k/a
OMNIPOINT COMMUNICATIONS, INC.), a
Wholly Owned Subsidiary of T-Mobile
USA, Inc.,**

Plaintiffs,

v.

**THE ZONING BOARD OF ADJUSTMENT
OF THE BOROUGH OF PARAMUS NEW
JERSEY,**

Defendants.

Civ. No. 09-04940 (KM) (MAH)

OPINION AND ORDER

KEVIN MCNULTY, U.S.D.J.:

Sprint Spectrum L.P. and T-Mobile Northeast LLC (collectively "Plaintiffs") filed this action for declaratory and injunctive relief against the Zoning Board of Adjustment of the Borough of Paramus ("Defendant" or "Board"), for violations of the Telecommunications Act of 1996 and of the New Jersey Municipal Land Use Law.¹

IT APPEARS that this matter comes before the Court on Plaintiffs' motion to strike the demand for a jury trial filed by Defendant; and it further

APPEARS the Telecommunications Act does not provide a statutory right to a jury trial. Therefore, the Board's jury trial demand depends on the existence of a jury trial right under the Seventh Amendment of the Constitution; and it further

¹ Because the Court writes only for the parties, this Opinion and Order is limited to those matters that are essential to the resolution of the present motion.

APPEARS that the Seventh Amendment right to a jury trial does not extend to claims for equitable relief;² and it further

APPEARS that Plaintiffs do not seek relief other than declaratory and injunctive relief, both of which are equitable in nature; and it further

APPEARS that the Board concedes that it has no right to a jury trial, but nevertheless asks the Court to empanel an advisory jury because it considers an advisory jury to be “something akin to the [Board];” and it further

APPEARS that the use of an advisory jury is unwarranted in this case, as it would only lengthen and complicate an already protracted proceeding. Empaneling an advisory jury would not alleviate the Court’s obligation to “find the facts specially and state its conclusions of law separately.” Fed. R. Civ. P. 52(a)(1). Nor is there any need to impose upon the time of jurors only to have the result of their attention and deliberations treated as merely advisory.

IT IS THEREFORE, on this 4th day of March, 2013,

ORDERED that Plaintiffs’ motion, Docket Entry No. 97, is **GRANTED**.

Date: March 4, 2013



KEVIN MCNULTY, U.S.D.J.

² See *Billing v. Ravin, Greenberg & Zackin, P.A.*, 22 F.3d 1242, 1245 (3d Cir. 1994) (“no jury right attaches to equitable claims”); 47 Am. Jur. 2d Jury § 33 (2012) (“Equitable actions do not require a jury trial in federal courts, and no right to a jury attaches to claims for equitable relief.”)